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19 UNITED STATES DISTRICT COURT
20 EASTERN DISTRICT OF CALIFORNIA
21 SACRAMENTO DIVISION

22 SIERRA CLUB and FRIENDS OF THE WEST)
23 SHORE,)

24 Plaintiffs,)

25 v.)

26 TAHOE REGIONAL PLANNING AGENCY,)
27 COUNTY OF PLACER, and BOARD OF)
28 SUPERVISORS OF THE COUNTY OF PLACER,)

29 Defendants)

30 HOMEWOOD VILLAGE RESORTS, LLC and)
31 JMA VENTURES, LLC,)

32 Defendants and)

33 Real Parties in Interest.)

Civil Case No.: 2:12-CV-00044-WBS-CKD
ORDER GRANTING PLAINTIFFS' AND DEFENDANTS' JOINT MOTION FOR PARTIAL RELIEF FROM JUDGMENT AND DISSOLUTION OF INJUNCTION

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1 Before the Court are Plaintiffs’ and Defendants’ Joint Motion for Partial Relief from
2 Judgment and Dissolution of Injunction. The joint motion seeks a determination that Defendants
3 have partially satisfied the Court’s Memorandum and Order Re: Cross Motions for Summary
4 Judgment issued on January 4, 2013 (ECF No. 69; hereafter, the “Order”) and that prospective
5 application of the unsatisfied portion of the Order is no longer warranted or equitable in light of the
6 settlement reached by the parties and new evidence produced to satisfy the Order. After
7 consideration of the joint motion and all supporting documents, the Court rules and finds as set
8 forth below.

9 **Order**

10 1. The Homewood Mountain Resort EIR Alternative 6 Economic Viability Analysis
11 and EPS Peer Review of Homewood Economic Viability Analysis provide substantial evidence
12 supporting the adequacy of the discussion of the financial viability of alternatives in the
13 Environmental Impact Report-Environmental Impact Statement (“EIR–EIS”) for the Homewood
14 Ski Area Master Plan (“Project”). This new evidence partially satisfies the Court’s Order on the
15 Alternative 6 analysis issue and demonstrates that the public and decisionmakers were not misled
16 by the EIR-EIS’s description of the financial viability of Alternative 6.

17 2. In January 2014, following the issuance of the Court’s Order, Plaintiffs and HMR
18 entered into a Settlement Agreement. Under the Settlement Agreement, HMR agreed to submit a
19 revised application to the County of Placer (“County”) and Tahoe Regional Planning Agency
20 (“TRPA”) to reduce the Project by thirteen (13) units, among other modifications.

21 3. The County and TRPA will determine whether additional environmental review is
22 necessary based on the proposed modifications to the project as well as any new information
23 regarding the feasibility of Alternative 6. *See* CEQA Guidelines § 15088.5(a); TRPA Rules of
24 Procedure, Rule 6.15.1.¹ The agencies will make this determination in the first instance. *See Eller*

25 _____
26 ^{1/} The State “CEQA Guidelines” appear at title 14 of the California Code of Regulations,
27 commencing at section 15000.

1 *Media Company v. Community Redevelopment Agency* 108 Cal. App. 4th 25, 39-44 (2003). The
2 County and TRPA will adopt additional findings, as necessary, to memorialize this determination.

3 4. Federal Rule of Civil Procedure 60(b) provides in relevant part that a party may
4 obtain relief from a judgment or order if, among other things, “(5) the judgment has been satisfied
5 ... or it is no longer equitable that the judgment should have prospective application; or (6) any
6 other reason that justifies relief.”² Fed.R.Civ.P. 60(b)(5)-(6) (emphasis added). “[This] Rule
7 codifies the courts’ traditional authority ... to modify or vacate the prospective effect of their
8 decrees[.]” *Bellevue Manor Assoc. v. United States*, 165 F.3d 1249, 1252 (9th Cir. 1999) (internal
9 quotations and citations omitted). The Rule “is designed to provide judges with discretion and
10 flexibility in modifying a decree.” *United States v. Asarco Inc.*, 430 F.3d 972, 979 (9th Cir. 2005).

11 5. The parties have met their burden under Federal Rule of Civil Procedure 60(b) to
12 demonstrate changed circumstances warranting relief. The proposed modifications to the Project
13 under the Settlement Agreement and the new evidence regarding the feasibility of alternatives
14 constitute changed circumstances warranting partial relief from the Court’s Order and dissolution
15 of the injunction requiring recirculation of the EIR-EIS.

16 Based on these determinations, the Court hereby ORDERS that Plaintiffs’ and Defendants’
17 Joint Motion for Partial Relief from Judgment and Dissolution of Injunction is GRANTED. The
18 injunction issued with the Court’s January 4, 2013 Order is dissolved. The hearing set for
19 Monday, May 5, 2014 is taken off calendar.

20 IT IS SO ORDERED.

21 Dated: May 1, 2014



22 **WILLIAM B. SHUBB**
23 **UNITED STATES DISTRICT JUDGE**

24 ^{2/} The parties move for relief under Federal Rule of Civil Procedure 60(b)(6) in the alternative.
25 “Rule 60(b)(6) serves as the catch-all provision, conferring on the court broad discretion to relieve
26 a party from final judgment upon such terms as are just, provided that the motion is made within a
27 reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1)
28 through (b)(5).” *Spacey v. Burgar*, 207 F. Supp. 2d 1037, 1048 (C.D. Cal. 2001), citing *Liljeberg v.*
Health Servs. Acquisition Corp., 486 U.S. 847, 863 (1988) (internal quotes and emphasis omitted).